

105TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. BAKER introduced the following bill; which was referred to the Committee
on _____

A BILL

To provide for the recognition of digital and other forms of authentication as an alternative to existing paper-based methods, to improve efficiency and soundness of the Nation's capital markets and the payment system, and to define and harmonize the practices, customs, and uses applicable to the conduct of electronic authentication, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electronic Financial
5 Services Efficiency Act of 1997”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) In recent years, new technological applica-
4 tions have had a significant impact on bank capital
5 markets and the manner in which business enter-
6 prises and financial institutions conduct their activi-
7 ties and operations.

8 (2) Financial and consumer transactions and
9 communications are being conducted in digital elec-
10 tronic formats because of the adoption of new tech-
11 nological applications which allow for the instanta-
12 neous retrieval and transmission of information and
13 the electronic consummation of business and per-
14 sonal transactions.

15 (3) These changes relate not only to the cre-
16 ation, retention, and delivery of documentation and
17 other data, but also to the purchase and sale of
18 goods and services, the receipt and payment of
19 funds, and other aspects of commerce and finance.

20 (4) These developments have allowed for the
21 emergence of a new electronic commerce infrastruc-
22 ture for consumer and financial communications and
23 transactions, and the concomitant emergence of elec-
24 tronic authentication methodologies.

25 (5) These new technologies have impacted, and
26 will continue to impact, the national payment sys-

1 tem, our financial services industry, and our Na-
2 tion's capital markets.

3 (6) Parties to consumer and financial trans-
4 actions have heretofore entered into agreements,
5 consistent with paper-based authentication meth-
6 odologies.

7 (7) Thus, where the formation of agreements
8 are otherwise valid and effective under applicable
9 law, the parties should be able to use electronic au-
10 thentication methodologies of equal or greater reli-
11 ability.

12 (8) Given the size and importance of our do-
13 mestic economy and the fact that electronic com-
14 merce is not limited by geographical or national
15 boundaries and will have a significant impact on
16 international finance, the United States should be
17 actively involved in the development of uniform glob-
18 al standards for electronic authentication.

19 (9) There are many industries that have the
20 technical expertise, can meet proposed national
21 standards, and have the desire to offer electronic au-
22 thentication services. Therefore, it is important not
23 to prematurely limit market access and stifle growth
24 by narrowly defining industries that may provide
25 electronic authentication services.

1 (10) As a result, it is appropriate for Congress
2 to enable a framework whereby government, busi-
3 ness enterprises, financial institutions, and consum-
4 ers can participate in electronic commerce in a via-
5 ble, safe, efficient, and consistent manner.

6 (b) PURPOSE.—The purpose of this Act is to provide
7 for the recognition of digital and other forms of authen-
8 tication as an alternative to existing paper-based methods,
9 to improve efficiency and soundness of the Nation’s capital
10 markets and payment system, and to define and har-
11 monize the practices, customs, and uses applicable to the
12 conduct of electronic authentication.

13 **SEC. 3. DEFINITIONS.**

14 For purposes of this Act, the following definitions
15 shall apply:

16 (1) ELECTRONIC COMMERCE.—The term “elec-
17 tronic commerce” means the transaction or conduct
18 of business in whole or part by electronic means.

19 (2) ELECTRONIC MEANS.—The term “electronic
20 means” includes all forms of electronic communica-
21 tion mediated by computer, including telephonic
22 communications, facsimile, electronic mail, electronic
23 data exchanges, satellite, cable, and fiber optic com-
24 munications.

1 (3) ELECTRONIC AUTHENTICATION.—The term
2 “electronic authentication” means any methodology,
3 technology, or technique intended to—

4 (A) establish the identity of the maker,
5 sender, or originator of a document or commu-
6 nication in electronic commerce; and

7 (B) establish the fact that the document or
8 communication has not been altered.

9 (4) DIGITAL SIGNATURE.—The term “digital
10 signature” means any electronic symbol or series of
11 symbols, created, or processed by a computer, in-
12 tended by the party using it (or authorizing its use)
13 to have the same legal force and effect as a manual
14 signature.

15 (5) CERTIFICATION AUTHORITY.—The term
16 “certification authority” means any private or public
17 entity which provides assurance that a particular
18 digital signature, or other form of electronic authen-
19 tication, is tied to the identity of an individual or
20 legal entity, or attests to the current validity of such
21 a signature.

22 (6) TRUSTED THIRD PARTY.—The term “trust-
23 ed third party” means a certification authority who
24 is known to 2 transacting parties and whose certifi-
25 cate is relied upon by those parties.

1 (7) CERTIFICATE.—The term “certificate” is an
2 electronic message the contents of which enable the
3 recipient to determine the attestation made regard-
4 ing the certificate holder by the certification author-
5 ity.

6 (8) STATE.—The term “State” has the mean-
7 ing given to such term in section 3 of the Federal
8 Deposit Insurance Act.

9 (9) AFFILIATE.—The term “affiliate” means
10 any person that controls, is controlled by, or is
11 under common control with another person.

12 **SEC. 4. COMMUNICATIONS WITH FEDERAL GOVERN-**
13 **MENTAL AGENCIES.**

14 In any written communication with an agency, de-
15 partment, or instrumentality of the United States Govern-
16 ment, or with any court of the United States, in which
17 a signature is required or used, any party to the commu-
18 nication may affix a signature by use of a digital signature
19 with a certificate issued by a trusted third party.

20 **SEC. 5. VALIDITY OF ELECTRONIC AUTHENTICATION.**

21 (a) VALIDITY OF ELECTRONIC COMMUNICATIONS
22 WITH AGENCIES, COURTS, AND INSTRUMENTALITIES OF
23 THE UNITED STATES.—All forms of electronic authentica-
24 tion that comport with standards as described in sub-
25 sections (a) and (b) of section 6 of this Act shall have

1 standing equal to paper-based, written signatures, such
2 that, with respect to any communications with Federal ad-
3 ministrative agencies, Federal courts and other instrumen-
4 talities of the United States government—

5 (1) any rule of law which requires a record to
6 be in writing shall be deemed satisfied; and

7 (2) any rule of law which requires a signature
8 shall be deemed satisfied.

9 (b) VALIDITY OF ELECTRONIC COMMUNICATIONS IN
10 GENERAL.—Unless otherwise expressly prohibited by the
11 laws of any State, all forms of electronic authentication
12 that comport with the standards as described in sub-
13 sections (a) and (b) of section 6 shall have standing equal
14 to paper-based, written signatures, such that—

15 (1) any rule of law which requires a record to
16 be in writing shall be deemed satisfied; and

17 (2) any rule of law which requires a signature
18 shall be deemed satisfied.

19 **SEC. 6. CRITERIA FOR ELIGIBILITY.**

20 (a) ELECTRONIC AUTHENTICATION.—Electronic au-
21 thentication technology shall be deemed valid hereunder
22 if such technology—

23 (1) reliably establishes the identity of the
24 maker, sender, or originator of a document or com-
25 munication in electronic commerce; and

1 (2) reliably establishes the fact that the docu-
2 ment or communication has not been altered.

3 (b) EMERGING TECHNOLOGIES.—2 currently ac-
4 knowledge signature technologies are public key cryptog-
5 raphy and signature dynamics technology. In contempla-
6 tion of acceptance of other technological applications, the
7 following criteria shall be applied in the determination of
8 their validity for purposes of this Act:

9 (1) The identification methodology shall be
10 unique to the person making, sending, originating a
11 document or communication.

12 (2) The identification technology shall be capa-
13 ble of verification.

14 (3) The identification method or device shall be
15 under the sole control of the person using it

16 (4) The identification technology or device shall
17 be linked to data or communication transmitted in
18 such a manner that if such data or communication
19 has been altered, the authentication becomes invalid.

20 **SEC. 7. NATIONAL ASSOCIATION OF CERTIFICATION AU-**
21 **THORITIES.**

22 (a) IN GENERAL.—There is hereby established the
23 National Association of Certification Authorities (here-
24 after in this section referred to as the “Association”).

1 (b) REGISTRATION.—Any person or group wishing to
2 provide electronic authentication services in the United
3 States shall be a registered member of the Association.

4 (c) DENIAL OF MEMBERSHIP.—

5 (1) DECERTIFICATION.—The Association may
6 deny membership to any person or group (or any af-
7 filiate of such person or group) who has been decer-
8 tified pursuant to subsection (e)(5)(D)(iii).

9 (2) FAILURE TO COMPLY WITH CODE OF CON-
10 DUCT.—The Association may deny membership to
11 any provider of electronic authentication services
12 who fails to comply with any guidelines, standards,
13 or codes of conduct regarding the use of electronic
14 authentication established by the Electronic Authen-
15 tications Standards Review Committee pursuant to
16 subsection (e)(2).

17 (3) FAILURE TO MEET STANDARDS.—The Asso-
18 ciation may deny membership to any provider of
19 electronic authentication services to any person or
20 group that is unable to meet standards established
21 pursuant to subsections (a) and (b) of section 6.

22 (4) PRACTICES INCONSISTENT WITH THIS
23 ACT.—The Association may bar an individual from
24 becoming affiliated with a member of the Association
25 if such individual has engaged in acts or practices

1 inconsistent with this Act and rules established by
2 the Association.

3 (5) LACK OF COOPERATION.—The Association
4 may bar any person or group from becoming affili-
5 ated with a member if such person or group does
6 not agree—

7 (A) to supply the Association with such in-
8 formation with respect to the relationship and
9 dealings of such person or group with the mem-
10 ber as may be specified in the rules of the Asso-
11 ciation; and

12 (B) to permit examination of the books
13 and records of such person or group to verify
14 the accuracy of any information so supplied.

15 (d) DUES.—The rules of the Association shall provide
16 for the equitable allocation of reasonable dues, fees, and
17 other charges among members and other persons applying
18 for membership or using any facility or system which the
19 Association operates or controls.

20 (e) STANDARDS REVIEW COMMITTEE.—

21 (1) IN GENERAL.—The Association shall estab-
22 lish the Electronic Authentications Standards Re-
23 view Committee (hereafter in this subsection re-
24 ferred to as the “Standards Review Committee”)
25 which shall establish, develop, and refine criteria to

1 be applied to the emerging electronic authentication
2 industry, including—

3 (A) the roles and responsibilities of the
4 parties involved in electronic authentication;

5 (B) the application of the standards de-
6 scribed in section 6(b) to emerging electronic
7 authentication;

8 (C) recognition of foreign legal and regu-
9 latory standards; and

10 (D) transparency requirements, licensing,
11 and registration of certification authorities.

12 (2) RULEMAKING.—With the approval of the
13 Secretary of the Treasury, the Standards Review
14 Committee shall establish and adopt such guidelines,
15 standards, and codes of conduct regarding the use of
16 electronic authentication by members of the Associa-
17 tion, including the rights and responsibilities of cer-
18 tification authorities in matters involving notifica-
19 tion, disclosure requirements, liability of consumers
20 and certification authorities, and hearing procedures
21 regarding disciplinary actions taken by the Stand-
22 ards Review Committee in furtherance of the pur-
23 poses of this Act.

24 (3) ENFORCEMENT.—The Standards Review
25 Committee shall have enforcement powers to ensure

1 minimum standards and protections for consumers
2 and shall establish and adopt disciplinary procedures
3 and policies in furtherance of the purposes of this
4 Act.

5 (4) DISCIPLINARY ACTIONS.—The Standards
6 Review Committee shall organize in a manner such
7 that disciplinary actions against members shall be
8 heard fairly and in a timely fashion and afford due
9 process.

10 (5) NOTIFICATION.—

11 (A) IN GENERAL.—If, in the opinion of the
12 Standards Review Committee, any certification
13 authority is engaging or has engaged in conduct
14 in contravention of any guideline, standard, or
15 code of conduct prescribed in accordance with
16 paragraph (3), the Standards Review Commit-
17 tee shall notify such certification authority.

18 (B) STATEMENT OF FACTS.—The notifica-
19 tion shall contain a statement of the facts con-
20 stituting the violation.

21 (C) PERIOD FOR RESPONSE.—The certifi-
22 cation authority shall respond to such notifica-
23 tion within 15 days.

24 (D) SANCTIONS.—Based upon the re-
25 sponse of the certification authority, if the

1 Standards Review Committee determines that
2 the certification authority has violated any such
3 guideline, standard, or code of conduct, the
4 committee may take any of the following ac-
5 tions:

6 (i) CENSURE.—Publicly censure the
7 certification authority.

8 (ii) SUSPENSION.—Prohibit the cer-
9 tification authority from providing elec-
10 tronic authentication services in the United
11 States for such period of time as the com-
12 mittee may determine to be appropriate.

13 (iii) DECERTIFICATION.—Prohibit the
14 certification authority from providing elec-
15 tronic authentication services in the United
16 States.

17 (iv) CIVIL PENALTY.—Impose mone-
18 tary penalties on the certification author-
19 ity.

20 (6) JUDICIAL REVIEW.—Any party aggrieved
21 by an order of the Standards Review Committee
22 under this Act may obtain a review of such order in
23 the United States Court of Appeals within any cir-
24 cuit wherein such party has its principal place of
25 business or in the court of Appeals in the District

1 of Columbia, by filing in the court, within 30 days
2 after the entry of the Standards Review Committee
3 order, a petition praying that the order of the
4 Standards Review Committee be set aside. A copy of
5 such petition shall be forthwith transmitted to the
6 Standards Review Committee by the clerk of the
7 court, and thereupon the Standards Review Commit-
8 tee shall file in the court the record made before the
9 Standards Review Committee. Upon the filing of
10 such petition the court shall have the jurisdiction to
11 affirm, set aside, or modify the order of the Stand-
12 ards Review Committee and to require the Stand-
13 ards Review Committee to take such action with re-
14 gard to the matter under review as the court deems
15 proper. The findings of the Standards Review Com-
16 mittee as to the facts, if supported by substantial
17 evidence, shall be conclusive.

18 (7) REPORT TO SECRETARY OF THE TREAS-
19 URY.—The Standards Review Committee shall
20 transmit to the Secretary of the Treasury, not later
21 than February 20 and July 20 of each year, com-
22 plete reports of the activities of the committee un-
23 dertaken in furtherance of the purposes of this Act,
24 including a statement of the committee's objectives
25 and plans for the next semiannual reporting period.

1 (8) STUDIES AND RECOMMENDATIONS.—The
2 Standards Review Committee may conduct studies
3 to carry out the purposes of this Act. On the basis
4 of such studies the Committee may make rec-
5 ommendations to the Secretary of the Treasury con-
6 cerning the implementation of this Act and such leg-
7 islative and administrative action as the committee
8 may determine to be necessary to promote the rec-
9 ognition of electronic authentication as an alter-
10 native to paper-based methods of verification.

11 **SEC. 8. OVERSIGHT.**

12 The Secretary of the Treasury shall provide effective
13 oversight and shall review the activities of the Electronic
14 Authentication Standards Review Committee on a semi-
15 annual basis, providing a venue for the discussion and air-
16 ing of all activity, standards and other material issues
17 which may have arisen during that time period.

18 **SEC. 9. CONSUMER PROTECTION.**

19 (a) IN GENERAL.—No provision of this Act shall be
20 construed as impairing any right afforded a consumer
21 under the provisions of any law applicable to an underly-
22 ing transaction or communication that is authenticated by
23 digital signature or other form of electronic authentication
24 that comports with the standards as described in sub-
25 sections (a) and (b) of section 6.

1 (b) NOTIFICATION.—Any transaction or communica-
2 tion involving a consumer that is authenticated by digital
3 signature or other form of electronic authentication that
4 comports with the standards as described in subsections
5 (a) and (b) of section 6 shall contain a notification of the
6 fact that such transaction or communication has been au-
7 thenticated. Such notification shall be in such form as pre-
8 scribed by the Electronic Authentication Standards Re-
9 view Committee.

10 (c) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 (1) CONSUMER.—The term “consumer” means
13 an individual.

14 (2) TRANSACTION.—The term “transaction” re-
15 fers only to transactions for personal, family, or
16 household purposes.

17 (3) COMMUNICATION.—The term “communica-
18 tion” means a communication pertaining only to
19 personal, family, or household purposes.